

# MAYOR & COUNCIL AGENDA COVER SHEET

**MEETING DATE:**

August 7, 2006

**CALL TO PODIUM:**

**Trudy Schwarz**

**RESPONSIBLE STAFF:**

**Trudy Schwarz, Community Planning Director**

**Jim Arnoult, Director, Department of Public Works, Park Maintenance and Engineering**

**Erica Shingara, Environmental Services Director**

**AGENDA ITEM:**

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
<b>X</b>	Ordinance -Introduction
	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other:

**PUBLIC HEARING HISTORY:**

(Please complete this section if agenda item is a public hearing)

Introduced	08/07/2006
Advertised	
Hearing Date	08/21/2006
Record Held Open	
Policy Discussion	

**TITLE:**

Introduction of an Ordinance To Amend Chapter 10 Of The City Code (Floodplain Ordinance), Article I, Entitled, "Site In General," Article II, Entitled, "Permit Process," Article III, Entitled, "Establishment Of Floodplain Zones," Article IV, "Development Regulations In Floodplain Zones," And Article V, Entitled "Specific Requirements" So As To Comply With Federal Emergency Management And State Of Maryland Requirements

**SUPPORTING BACKGROUND:**

In September of 2005, the Federal Emergency Management Administration (FEMA) of the Department of Homeland Security sent the City new Digital Flood Insurance Maps (DFIRM) and a Flood Insurance Study (FIS). City staff, along with the staff of Montgomery County and other jurisdictions in the County, met with FEMA and the contractor conducting the study on December 13, 2005. As part of the meeting, the City's Floodplain Ordinance was submitted to FEMA for their review. On January 13, 2006, a letter was sent requesting changes to the code section related to "Substantial Improvement." Following that, staff also compared the existing ordinance to the State of Maryland's updated model ordinance. Changes have been incorporated in the proposed amendment to the Floodplain Ordinance to conform to both the State and FEMA requirements.

Tentative schedule:

Public Hearing: August 21, 2006

Attachments:

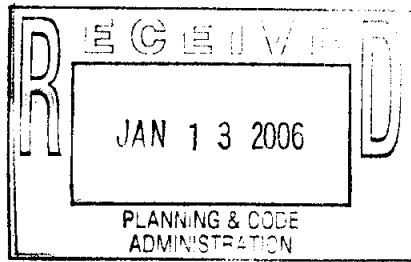
Draft Ordinance

January 10, 2006 Letter from FEMA

June 2, 2006 Letter from FEMA

**DESIRED OUTCOME:**

**Vote on Introduction of Ordinance**



U.S. Department of Homeland Security  
Region III  
One Independence Mall, Sixth Floor  
615 Chestnut Street  
Philadelphia, PA 19106-4404



**FEMA**

January 10, 2006

Ms. Trudy M. W. Schwartz  
Community Planning Director  
Planning and Code Administration  
City of Gaithersburg  
31 South Summit Avenue  
Gaithersburg, Maryland 20877

Dear Ms. Schwartz:

We have reviewed the Gaithersburg, Maryland floodplain ordinance, adopted as Chapter 10 of the City Code of Ordinances. Based upon our review, Chapter 10 remains compliant with Section 60.3d of 44 CFR, National Flood Insurance Program (NFIP) regulations.

Your efforts toward reducing future flood losses in Gaithersburg, Maryland are commendable. However, there is one provision statement about substantial improvements to Historic Structures within Chapter 10 that we wish to further clarify. Alterations to Historic Structures that fall below the 50 percent market value threshold should be protected against the effects of the one hundred year flood, when possible. Those improvements, alterations, etc. to Historic Structures that exceed the 50 percent threshold are considered 'substantial improvements'. Substantial improvements to all new development/construction should be "flood proofed" to the greatest extent possible at or above the one-hundred year flood protection elevation.

If you have any questions or problems regarding ordinance enforcement or any other aspect of the NFIP, please do not hesitate to contact me by calling 215-931-5510. Thank you for your continued support and interest in the NFIP.

Sincerely,

Etta Sims  
Community Planner  
Mitigation Division

CC: Mr. James D. Arnoult, P. E., Director; Public Works, Park Maintenance & Engineering  
Mr. John Joyce, Md. NFIP Coordinator

JUN 14 2006



**FEMA**

*David*

JUN 02 2006

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

The Honorable Sidney A. Katz  
Mayor, City of Gaithersburg  
31 South Summit Avenue  
Gaithersburg, Maryland

Dear Mayor Katz:

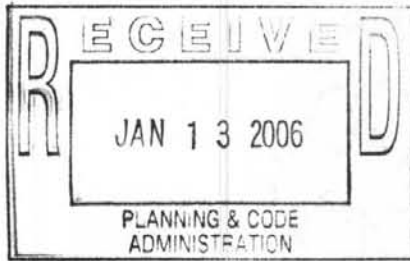
I appreciate and commend you for the efforts that have been put forth in implementing the floodplain management measures for the City of Gaithersburg, Maryland. I also want to take this opportunity to remind you of the following:

- a Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) have been completed for your community;
- the FIS and FIRM will become effective on September 29, 2006; and
- by that date, the Department of Homeland Security's Federal Emergency Management Agency (FEMA) Regional Office will have to approve the legally enforceable floodplain management measures your community adopts in accordance with 44 Code of Federal Regulations Section 60.3 (d).

As noted in FEMA's letter dated March 29, 2006, no significant changes have been made to the flood hazard data presented on the Preliminary and/or revised Preliminary copies of the FIRM for the City of Gaithersburg. Therefore, the City of Gaithersburg should use the Preliminary and/or revised Preliminary copies of the FIRM as the basis for adopting the required floodplain management measures. Final printed copies of the FIRM for the City of Gaithersburg will be sent to you within the next few months.

If you encounter difficulties in enacting the measures, I recommend you contact the Maryland Department of Environment. You may contact John Joyce, CFM, the National Flood Insurance Program (NFIP) State Coordinator, by telephone at (410) 631-4164, by mail at 1800 Washington Boulevard, Suite 430, Baltimore, Maryland 21230, or by e-mail at [jjoyce@mde.state.md.us](mailto:jjoyce@mde.state.md.us)

The FEMA Regional staff in Philadelphia, Pennsylvania, is also available to provide technical assistance and guidance in the development of floodplain management measures. The adoption of compliant floodplain management measures will provide protection for the City of Gaithersburg and will ensure participation in the NFIP. The Regional Office may be contacted by telephone at (215) 931-5608 or by mail. Please send any inquiries to the Director, Federal Insurance and Mitigation Division, FEMA Region III, by mail at One Independence Mall, Sixth Floor, 615 Chestnut Street, Philadelphia, Pennsylvania 19106-4404.



U.S. Department of Homeland Security  
Region III  
One Independence Mall, Sixth Floor  
615 Chestnut Street  
Philadelphia, PA 19106-4404



**FEMA**

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Planning and Code Administration  
City of Gaithersburg  
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If you have any questions or problems regarding ordinance enforcement or any other aspect of the NFIP, please do not hesitate to contact me by calling 215-931-5510. Thank you for your continued support and interest in the NFIP.

Sincerely,

A handwritten signature in cursive script, appearing to read "Etta Sims".

Etta Sims  
Community Planner  
Mitigation Division

CC: Mr. James D. Arnoult, P. E., Director; Public Works, Park Maintenance & Engineering  
Mr. John Joyce, Md. NFIP Coordinator

JUN 14 2006



**FEMA**

*David*

JUN 02 2006

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The Honorable Sidney A. Katz  
Mayor, City of Gaithersburg  
31 South Summit Avenue  
Gaithersburg, Maryland

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- by that date, the Department of Homeland Security's Federal Emergency Management Agency (FEMA) Regional Office will have to approve the legally enforceable floodplain management measures your community adopts in accordance with 44 Code of Federal Regulations Section 60.3 (d).

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The Honorable Sidney A. Katz

JUN 02 2006

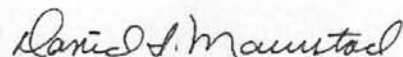
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The NFIP State Coordinating Office for your State has verified that Maryland communities may include language in their floodplain management measures that automatically adopt the most recently available flood elevation data provided by FEMA. The City of Gaithersburg's floodplain management measures may be sufficient if the measures include suitable automatic adoption language and are otherwise in accordance with the minimum requirements of the NFIP. The NFIP State Coordinator can assist you further in clarifying questions you may have about automatic adoption.

I realize that you may have already contacted the NFIP State Coordinator or the FEMA Regional Office, and may now be in the final adoption process or may have recently adopted the appropriate measures. If you have not adopted the appropriate measures, please consider this letter a formal reminder that you only have until September 29, 2006, to adopt the appropriate floodplain management measures and request approval from the FEMA Regional Office. The City of Gaithersburg's adopted measures will be reviewed upon receipt and the FEMA Regional Office will notify you when the measures are approved.

I recommend you submit your community's floodplain management measures and request for approval from the FEMA Regional Office by the effective date to avoid suspension from the NFIP.

Sincerely,



David I. Maurstad  
Director  
Mitigation Division

cc: Patricia G. Arcuri, Acting Regional Director, FEMA Region III  
John Joyce, NFIP State Coordinator, Maryland Department of Environment  
David B. Humpton, City Manager, City of Gaithersburg

ORDINANCE No. \_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 10 OF THE CITY CODE  
(FLOODPLAIN ORDINANCE), ARTICLE I, ENTITLED,  
"SITE IN GENERAL," ARTICLE II, ENTITLED, "PERMIT PROCESS," ARTICLE III,  
ENTITLED, "ESTABLISHMENT OF FLOODPLAIN ZONES," ARTICLE IV,  
"DEVELOPMENT REGULATIONS IN FLOODPLAIN ZONES," AND ARTICLE V,  
ENTITLED "SPECIFIC REQUIREMENTS" SO AS TO COMPLY WITH FEDERAL  
EMERGENCY MANAGEMENT AND STATE OF MARYLAND REQUIREMENTS

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled, that Chapter 10 of the City Code (Floodplain Management), Article I through Article V, §§10-2, 10-28, 10-43, 10-51, 10-52 and 10-70 is hereby amended to read as follows:

ARTICLE 1. IN GENERAL

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**Sec. 10-2. Definitions.**

*Accessory structure* means a detached structure on the same parcel of property as the principal structure, the use of which is incidental and subordinate to the principal structure, eg. a shed or detached garage.

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*Flood Protection Elevation (FPE)* means the elevation of the base flood plus [one foot] two feet freeboard.

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*Repetitive Loss* - flood related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred.

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*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill*

*Existing law unaffected by bill..*



*Substantial improvement* means any repair, reconstruction, alteration, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure (less land value) either:

- (1) Before the improvement or repair is started; or
- (2) If the structure has incurred substantial damage and been restored, before the damage occurred.

Substantial improvement occurs when the first alteration of any wall, ceiling, floor or other structural part of the building commences. The minimum repairs needed to correct previously identified violations of local health, safety or sanitary codes, [and alterations to historic structures which do not preclude their continued designation and use as historic structures] are not considered substantial improvements.

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## ARTICLE II. PERMIT PROCEDURES

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### Sec. 10-28. Subdivision proposals.

(a) In addition to the information required in section 10-27, an applicant for subdivision in the nontidal floodplain zone shall submit a plan to demonstrate that a building site for each lot is outside of the one hundred-year floodplain. The local permitting official shall assure that a plan for the perpetual protection of the floodplain areas in their natural state as required under section 10-52(e) is included. The plan shall demonstrate how development in the floodplain will be avoided, and the floodplain maintained in a natural state to the extent possible.

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## ARTICLE III. ESTABLISHMENT OF FLOODPLAIN ZONES

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### Sec. 10-43. Floodplain boundaries.

(a) *Floodplain zone determination.* The local permitting official will determine the floodplain zone in which the development activity is proposed using the Floodway Maps and FIS if available, or, if not, by using the FIRM. Without prior approval from FEMA, the community shall use no other data to enforce floodplain management regulations. Where map boundaries and elevations disagree, elevations prevail, with no approval from FEMA required. If site studies indicate that the FEMA mapped floodplain is incorrectly delineated, revisions shall be made through a Conditional

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Letter of Map Revision (CLOMR), Letter of Map Revision (LOMR), or Letter of Map Amendment (LOMA) issued by FEMA prior to subdivision approval. If required by FEMA, as-built data must be provided to FEMA, and a Letter of Map Revision (LOMR) issued prior to any structures being permitted. Floodplain changes should be authorized only when the actual conditions are not reflected in the mapped floodplain or for necessary public infrastructure.

#### ARTICLE IV. DEVELOPMENT REGULATIONS IN FLOODPLAIN ZONES

##### Sec. 10-51. Floodplain zone regulations--Generally.

(3) *Sediment and stormwater management.* Any land disturbance permitted in the floodplain must have an approved stormwater management and sediment and erosion control plan as required by state and city regulations. Stormwater management devices may not encroach into the floodway, and should be kept out the floodplain, if possible. The plan must include design of land contours that will not increase surface water runoff onto neighboring properties. Ground cover must be established immediately after disturbance, and a plan for permanent plantings, including trees, should provide for adequate vegetative cover within the flood protection setback from watercourses to prevent erosion.

##### Sec. 10-52. Floodway fringe requirements.

(b) *Elevation requirements--New and substantially improved structures.* All new or substantially improved, or repetitive loss residential and nonresidential structures, including manufactured homes, shall have the lowest floor elevated to or above the flood protection elevation. Basements are not permitted. Horizontal expansions which increase the footprint and that are less than substantial shall also have the lowest flood elevation to or above the flood protection elevation. The elevation of the lowest floor shall be certified by a registered surveyor or professional engineer on the elevation certificate, after the lowest floor is in place. Enclosures below the flood protection elevation must be constructed with water equalizing vents to meet the specifications of section 10-67.

(c) *Fill.*

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- (1) The placement of more than six hundred (600) cubic yards of fill per parcel/lot in the floodplain is prohibited except by variance. If a limited amount of fill in the floodway fringe is warranted or will result in a better site design, a variance may be considered. Elevating buildings by other methods must be considered unless six hundred (600) cubic yards or less of fill are required. An applicant shall demonstrate that fill is the only feasible alternative to raising the building to at least the flood protection elevation, and that the amount of fill used will not affect the flood storage capacity or increase flooding onto neighboring properties. The applicant shall be prepared to provide compensatory storage or other concessions to protect the natural resources of the site to obtain the variance.

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## ARTICLE V. SPECIFIC REQUIREMENTS

\* \* \*

### **Sec. 10-70. Utilities.**

(a) *Electric.* All electric utilities to the building side of the meter, both interior and exterior to the building, are regulated by this chapter. Distribution panel boxes must be at least two (2) feet above the flood protection elevation. All outlets and electrical installations, such as heat pumps, air conditioners, water heaters, furnaces, generators, distribution systems, including duct work, must be installed at or above the flood protection elevation.

(b) *Plumbing.* Toilets, sinks, showers, water heaters, pressure tanks, furnaces and other permanent plumbing installations must be installed at or above the flood protection elevation.

(c) *Gas.* Gas meters, distribution lines and gas appliances must be installed at or above the flood protection elevation.

(d) *Water supply and sanitary facilities.* Water supply distribution and sanitary disposal collection systems must be designed to minimize or eliminate the infiltration of flood waters into the systems or discharges from the systems into flood waters and shall be located and constructed so as to minimize or eliminate flood damage. On-site sewage disposal systems shall meet these same standards.

(e) *Fuel Tanks.* All gas (propane) tanks installed in the floodplain are required to be anchored to prevent flotation in accordance with the National Fire Protection Association

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Code 58, Section 3-2.2.7 (h), which states: "Where necessary to prevent flotation due to possible high flood waters around aboveground or mounded containers, or high water table for those underground and partially underground, containers shall be securely anchored." This ordinance also requires that all tanks installed in floodplain areas be either elevated or adequately anchored to prevent flotation up to the Flood Protection Elevation.

All fuel oil storage tanks installed in the floodplain must be either elevated or securely anchored to prevent flotation up to the Flood Protection Elevation. Vent pipes must extend to or above the Flood Protection Elevation and fill caps below the Flood Protection Elevation must be screw type with a tight fitting gasket to prevent mixing of water with oil.

ADOPTED by the City Council of Gaithersburg, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this \_\_\_\_\_ day of \_\_\_\_\_, 2006. APPROVED/VETOED by the Mayor of the City of Gaithersburg, Maryland this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

SIDNEY A. KATZ, MAYOR

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THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, and the same was APPROVED/VETOED by the Mayor of the City of Gaithersburg on the \_\_\_\_\_ day of \_\_\_\_\_, 2006. This Ordinance will become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
DAVID B. HUMPTON, City Manager

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